

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

KAROL D. MAGISTRELLI,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:14-cv-00657

GARY C. MAGISTRELLI,

Defendant.

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**REPORT AND RECOMMENDATION**

Plaintiff initiated this matter on June 18, 2014. Having granted Plaintiff's motion to proceed as a pauper, the Court has conducted an initial review of the complaint pursuant to 28 U.S.C. § 1915(e)(2) to determine whether it is frivolous, malicious, or fails to state a claim upon which relief can be granted. Having conducted this initial review, the Court concludes that Plaintiff's complaint must be dismissed for failure to state a claim upon which relief may be granted.

To satisfy Fed. R. Civ. P. 12(b)(6), a complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009). This plausibility standard "is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." If the complaint simply pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* As the Court further observed:

Two working principles underlie our decision in *Twombly*. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. . . Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. **Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. . . Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.** But where the wellpleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - but it has not “show[n]” - “that the pleader is entitled to relief.”

*Id.* at 1949-50 (emphasis added, internal citations omitted).

Plaintiff’s rambling, stream-of-consciousness, mostly unintelligible complaint and related filings comprise over 1,200 pages. Among other things, plaintiff accuses her ex-husband, her sister, various judges, lawyers and law enforcement officers of retaliation, covering up child trafficking and murder, acceptance of bribes, forced “secret back-door abortion” and the hiring of hit men. Evaluated pursuant to the aforementioned plausibility standard, the Court concludes that the facts alleged in Plaintiff’s complaint fail to rise to the standards of *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) to state a claim upon which relief may be granted in this court. Accordingly, the undersigned recommends that Plaintiff’s claims be dismissed with prejudice.

### CONCLUSION

For the reasons articulated herein, the undersigned recommends that Plaintiff’s complaint be **dismissed** because it is both legally and factually frivolous under 28 U.S.C. §

1915(e)(2). The undersigned recommends that leave to appeal in forma pauperis be denied on the same basis.

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Date: July 14, 2014

/s/ Ellen S. Carmody  
ELLEN S. CARMODY  
United States Magistrate Judge